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This is in addition to my previous comment dated May 21, 2013, which has further details and supporting documents. I support the adoption of Larry Hammond's Petition to Amend ER 3.8. and ER 3.10 draft along with suggestions by Kathleen E. Brody, Osborne Maledon and Christina M. Phillips, Arizona Public Defenders Assoc. who grasp the essence of wrongful convictions and the need for clarification.

The prosecutors, who oppose ER 3.8, have little to no grasp of the devastation caused by false allegations, wrongful convictions and wrongful imprisonment -- to the defendants, their families and children. As a witness to these injustices over nearly ten years, I've met exonerees from across the country and Ray Krone here in Arizona. I've heard their stories of manifest injustice, innocent and having spent decades living in horrific conditions. There is a long, sad history and pattern in Arizona that is well known, that none of the prosecutors discussed. None acknowledged a need to "right the wrongs" of those who are innocent and wrongfully convicted under the reign of terror of disbarred ex-Maricopa County Andrew Thomas and his chief "charging" prosecutor, ex-DCA Lisa Aubuchon, also disbarred and their over 200,000 FELONY CASES.

Ask the victims of their malicious prosecutions and abuse of power. Former Judge Donahoe said after his false allegation RICO case, that he sent many people to prison. Now he wondered how many were innocent. The judges, elected officials, lawyers and others falsely accused by Maricopa County Attorney's office have settled their lawsuits, while the "ordinary" people who were victims of the MCAO have been ignored.

We are a witness to many. Bill Montgomery has chosen to sweep them under the rug as if this reign of terror never existed.

Maricopa County Attorney Bill Montgomery and Mark Faull, chief deputy, claim there are no wrongful convictions in Arizona, in their comments, dated May 17, 2013. They are wrong. See charts below.

The Ninth Circuit Court of Appeals opinion overturned the conviction and sentence of Debra Milke after 22 years on death row, on March 14, 2013, yet not be mentioned by Maricopa County Attorney Bill Montgomery as he protects a deceptive, troubled detective rather than "right the wrongs" in this

tragic case of manifest injustice.

Attorney General Tom Horne, in his comment dated May 20, 2013 says there are no Brady violations in Arizona. He is wrong, as well. Larry Hammond [et.al.](#) cites 4 cases where there were wrongful convictions and the prosecution had access to material exculpatory evidence. See chart below.

Maricopa County Attorney Andrew Thomas was disbarred for prosecutorial misconduct as well as his chief "charging" prosecutor, ex-DCA Lisa Aubuchon in what is considered a very rare occurrence. The integrity of the Maricopa County Office has been questioned by the public and media.

Thomas' successor, Bill Montgomery was admonished by a judge for failure to disclose material to the judge in the Debra Milke hearing for possible retrial. The next day he held a 45-minute press release spent discussing exculpatory evidence he failed to give to the judge and defense the day before.

Maricopa County Bill Montgomery and Mark Faull, chief deputy in their comment dated, October 25, 2013, state that "Nor has there been any showing that in any case in Arizona prosecutors failed to act appropriately when discovering the type of evidence discussed in this proposal". Once again, Bill Montgomery and Mark Faull are wrong. Study the Courtney Bisbee, Scottsdale case, falsely accused in 2004 and read the May 20, 2013 comment along with attachments by Camille Tilley. Read the change.org Petition with over 40,000 signatures supporting Courtney, a petition created by the father and the older brother (star prosecution witness) of the accuser, saying there was a motive for money by the mother who made them lie.

It is clear that wrongful convictions occur. Study the National Exoneration Registry of 1,233 exonerations and the statistics. In the child sex abuse category, perjury and false accusations account for 74%. This is a staggering percentage. But the crime category coupled with Arizona's draconian mandatory sentencing is the prosecutors weapon for "easy" convictions.

The proposed changes for ER 3.8 and 3.10 which the ABA started in 2008, is long overdue for Arizona, and is needed to address fairness and consistency in the courts and to protect Arizona citizens. Justice will be better served if Arizona's ethics rules clearly define the prosecutor's obligations when new evidence and/or exculpatory evidence comes forward or is known to exist.

Prosecutors have a 95% or more conviction rate due to "plea bargains" that is nothing more than *bribery*. *Bribery* is a violation of Article II, Sec. 4 of our U.S. Constitution. Laws that allow immunity for prosecutors who abuse their power and destroy lives is immoral and evil."

Exoneration Detail List - 1,233 Exonerations; 12 exonerated in Arizona

<http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={faf6eddb-5a68-4f8f-8a52-2c61f5bf9ea7}&SortField=ST&SortDir=Asc>

Cruz	Robert	3	Hispanic	A		Murder	Death
		3		Z			
Fish	Harold	5	Caucasian	A	NC	Murder	10 years
		7		Z			
Girdler, Jr.	Ray	3	Caucasian	A		Murder	Life
		6		Z			
Grannis	David	2	Caucasian	A		Murder	Death
		1		Z			
Krone	Ray	3	Caucasian	A		Murder	Death
		4		Z			
McCrimmon	Christopher	2	Black	A		Murder	Death
		0		Z			
Minnitt	Andre	2	Black	A		Murder	Death
		1		Z			
Peak	Carolyn June	3	Caucasian	A	F	Murder	Not sentenced
		9		Z			
Prion	Lemuel	3	Caucasian	A		Murder	Death
		0		Z			
Robison	James Albert	5	Caucasian	A	CDC	Murder	Death
		3		Z			
Watkins	John	1	Caucasian	A	P	Sexual Assault	14 years
		8		Z			
Witt	Drayton	1	Caucasian	A	NC, SBS	Murder	20 years
		8		Z			

ARIZONA BRADY VIOLATION CASES:

Canion v. Cole, 208 Ariz. 133, 91 P.3d 355

It is true that, by its words, Rule 15.1 does not apply to PCR proceedings, but to agree with the State that this is conclusive would allow the prosecution that unlawfully failed to disclose exculpatory information in a timely manner to continue to evade that duty and thwart the due process of law to which an accused is entitled. The Arizona Supreme Court held in State v. Schreiber, 115 Ariz. 555, 556, 566 P.2d 1031, 1032 (1977), that a Rule 32 petition should be granted when the prosecution's non-disclosure of evidence denied the petitioner's right to due process, citing the United States and Arizona Constitutions. Remand was required after defendant showed good cause and made colorable allegations of newly discovered materials.

Martin-Costa v. Kiger, 235 P.3d 1040

While the parent of a minor crime victim had limited standing to enforce any right guaranteed to the victim, neither the Victims' Bill of Rights under Ariz. Const. art. 2, § 2.1, Ariz. Rev. Stat. § 13-4401 et seq., nor Ariz. R. Crim. P. 39 granted a crime victim the right to seek disqualification of the trial judge or defense counsel.

State v. Talmadge, 196 Ariz. 436

In criminal child abuse case, trial court's ruling preventing Scottish expert on temporary brittle bone disease from testifying as defense expert witness was an abuse of discretion, and the error was reversible.

9TH CIRCUIT COURT- BRADY VIOLATION CASES:

Edmond v. Collins, 8 F.3d 290 (5th Cir. 1993)

US v. Brumel - Alvarez, 976 F.2d 1235 (9th Cir. 1992)

Brady doctrine requires prosecution to produce exculpatory evidence and evidence useful for impeachment when requested to do so by defendant.

Bartholomew v. Wood, 34 F.3d 870 (9th Cir. 1994)

Prosecution's failure to disclose material and favorable evidence to defendant will violate due process under BRADY, even when defendant makes no request for such evidence.

US v. Aichele, 941 F.2d 761 (9th Cir. 1991)

To escape BRADY sanction, disclosure must be made at time when disclosure would be of value to accused.

US v. Hanna, 55 F.3d 1456 (9th Cir. 1995)

1. "Brady material" is any evidence material either to guilt or punishment, which is favorable to, accused, irrespective of good faith or bad faith of prosecution.
2. Prosecutor's duty to reveal BRADY materials does not depend on request by defense.

US v. Zuni - Arce, 44 F.3d 1420 (9th Cir. 1995)

Under Brady, exculpatory evidence cannot be kept out of hands of defense just because prosecutor does not have it, where investigating agency does.